

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

WILLIAM SCOTT BAUMHOFER,

3:13-CV-00794-BR

Plaintiff,

OPINION AND ORDER

v.

STATE OF OREGON DEPARTMENT OF
HUMAN SERVICES (DHS), SPD,
APD, OVRS, DAV+,

Defendants.

WILLIAM SCOTT BAUMHOFER
7583 S.W. 74th Avenue, #F1
Portland, OR 97223
(503) 781-3488

Plaintiff, *Pro Se*

ELLEN ROSENBLUM
Attorney General
ANDREW D. CAMPBELL
Assistant Attorney General
1162 Court Street N.E.
Salem, OR 97301
(503) 947-4700

Attorneys for Defendant State of Oregon Department of
Human Services (hereinafter referred to as DHS)

BROWN, Judge.

This matter comes before the Court on Defendant DHS's Motion (#19) to Strike Claims. For the reasons that follow, the Court **GRANTS** Defendant's Motion as to Plaintiff's First and Third Claims and part of Plaintiff's Fourth Claim.

BACKGROUND

The following facts are taken from DHS's Memorandum in Support of its Motion to Strike Claims and the Affidavit of Kimberly Hector.

Since 2003 Plaintiff William Scott Baumhofer has been a client of the Oregon Office of Vocational and Rehabilitation Services (OVRS), which is a unit of DHS. Aff. of Kimberly Hector, Ex. A at 2.

On August 28, 2012, the OVRS closed Plaintiff's case.

On October 3, 2012, Plaintiff filed a Request for Impartial Fair Hearing requesting a due-process hearing on the August 28, 2012, closure of his case.

On January 29, 2013, a due-process hearing was held as to "whether OVRS inappropriately closed [Plaintiff]'s file, treated unfairly, or otherwise failed in its mandate." Hector Aff., Ex. A at 5.

On March 11, 2013, the hearing officer issued a decision in which he addressed the following six issues:

1. Did [OVRS] wrongly close [Plaintiff's] file on August 28, 2013?
2. Has OVRS released a complete copy of [Plaintiff's] case file to [him]? If not, must OVRS do so?
3. Has OVRS made the "tape and transcript" from the pre-hearing conference and the hearing available to [Plaintiff]? If not, must OVRS do so?
4. Has OVRS treated [Plaintiff] in an unfair or unprofessional manner?
5. Must OVRS provide [Plaintiff] with respiratory therapy or physical therapy services?
6. Has OVRS informed [Plaintiff] of what services OVRS will provide? If not, must OVRS do so?

Hector Aff., Ex. A at 3. The hearing officer concluded: OVRS properly closed Plaintiff's case file on August 28, 2012; OVRS must provide Plaintiff with a complete copy of his case file; OVRS made the audio recording of the hearing available to Plaintiff and was not required to provide a written transcript of the hearing; OVRS treated Plaintiff in a fair and professional manner; OVRS is not required to provide Plaintiff with respiratory therapy or physical therapy services "in the absence of medical documentation of such impairments creating barriers to [Plaintiff's] employment"; and OVRS has informed Plaintiff of what services OVRS will provide. Hector Aff., Ex. A at 6.

On May 10, 2013, Plaintiff filed a *pro se* Complaint in this Court asserting this Court has jurisdiction to review due-process

hearing decisions pursuant to 29 U.S.C. § 722(c) and 34 C.F.R. § 361.57. Although it is not entirely clear, it appears Plaintiff seeks review of the order issued by DHS on March 11, 2013. In the Relief portion of his Complaint Plaintiff requests the following:

- (1) Have single case worker for all services & benefits at Dept. of Human Service as to I'm told to go away or get lose as they state I or we have nothing to do with that issues, instead of finding the correct Open Door, staff or set record to give details why other at Dept of Human Service have handle these issues.
- (2) Get an updated conditional certification from the state workforce (SWA) or a participating local agency for the work opportunity credit as mention on IRS Form 8850 OMB #1545-1500.
- (3) Correctly Advance L.I.S. to Medicare Saving(s) Program(s) for reimbursement of Part B or the likes of Qualifying Individual (QI) Program p99 of Medicare & You 2013 ~ CMS Product No. 10050-57 September 2012.
- (4) Correctly release of files & records.

Compl. at IV.

On August 2, 2013, DHS filed a Motion to Strike in which it seeks an order striking Plaintiff's First, Third, and Fourth requests for relief. The Court took DHS's Motion under advisement on September 30, 2013.

STANDARDS

Federal Rule of Civil Procedure 12(f) provides: "The court

may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter."

"'The purpose of a Rule 12(f) motion is to avoid spending time and money litigating spurious issues.'" *Kirola v. City and County of San Francisco*, No. C 07-3685 SBA, 2011 WL 89722, at *1 (N.D. Cal. Jan. 11, 2011)(quoting *Barnes v. AT&T Pension Ben. Plan-Nonbargained Program*, 718 F. Supp. 2d 1167, 1170 (N.D. Cal. 2010)). See also *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993)(same), rev'd on other grounds, 510 U.S. 517 (1994). "'[M]otions to strike under Fed. R. Civ. P. 12(f) are viewed with disfavor and are infrequently granted.'" *Id.* (quoting *Stanbury Law Firm v. I.R.S.*, 221 F.3d 1059, 1063 (8th Cir. 2000)).

DISCUSSION

DHS moves to strike Plaintiff's First, Third, and Fourth Claims on the grounds that they do not relate to the March 11, 2013, final order issued by DHS; Plaintiff did not raise the issues set out in those claims and they were not addressed in the March 11, 2013, order; and Plaintiff, therefore, may not raise those issues in a civil action before this Court.

I. The Law

29 U.S.C. § 722(c) provides in pertinent part:

Each State shall establish procedures for

mediation of, and procedures for review through an impartial due process hearing of, determinations made by personnel of the designated State unit that affect the provision of vocational rehabilitation services to applicants or eligible individuals.

* * *

The procedures shall provide that an applicant or an eligible individual . . . shall be notified of--

(I) the right to obtain review of determinations described in paragraph (1) in an impartial due process hearing.

* * *

A due process hearing . . . shall be conducted by an impartial hearing officer who shall issue a decision based on the provisions of the approved State plan. . . . The officer shall provide the decision in writing to the applicant or eligible individual.

* * *

A decision made after a [due process] hearing . . . shall be final, except that a party may . . . bring a civil action under subparagraph (J).

The provision related to review by this Court of the decision of a hearing officer provides in pertinent part:

Any party aggrieved by a final decision [of an impartial hearing officer], may bring a civil action for review of such decision. The action may be brought in . . . a district court of the United States of competent jurisdiction without regard to the amount in controversy.

* * *

In any action brought under this subparagraph, the court--

* * *

(I) shall receive the records relating to the hearing . . . if applicable; [and]

* * *

(III) basing the decision of the court on the preponderance of the evidence, shall grant such relief as the court determines to be appropriate.

29 U.S.C. § 722(c)(J)(I).

In addition, 34 C.F.R. § 361.57(I) provides in pertinent part: "Any party who disagrees with the findings and decision of an impartial hearing officer . . . [has] a right to bring a civil action with respect to the matter in dispute."

II. Analysis

DHS moves to strike Plaintiff's First and Third Claims because they were not before the hearings officer and are not the subject of the March 11, 2013, order. In addition, DHS asserts Claim Four should be stricken to the extent that Plaintiff seeks records beyond those requested and addressed in the March 11, 2013, order. According to DHS, these matters represent new substantive issues rather than review of the hearing officer's March 11, 2013, decision, and, therefore, the Court lacks jurisdiction to hear these issues. The Court agrees. See, e.g., *Haranzo v. Dep't of Rehab. Serv.*, No. Civ. A. 7:04-CV- 00326, 2005 WL 3019240, at *4 (W.D. Va. Nov. 10, 2005) ("parties must exhaust the administrative remedies available before they have a

right to bring a civil action" pursuant to § 722(c)(J)(I) and 34 C.F.R. § 361.57(I)).

DHS also asserts Plaintiff's Third Claim should be stricken on the ground that the benefits Plaintiff seeks are not under OVRS's purview and the agency responsible for those benefits was not a party to the due-process hearing. In his Third Claim Plaintiff seeks "Correctly Advance L.I.S. to Medicare Saving(s) Program(s) for reimbursement of Part B or the likes of Qualifying Individual (QI) Program p99 of Medicare & You 2013 ~ CMS Product No. 10050-57 September 2012." DHS, however, points out that OVRS does not coordinate the benefits sought by Plaintiff, and, in fact, those benefits are coordinated by Aging & People with Disabilities (APD), which was not a party to the agency proceedings.

On this record the Court concludes it also lacks the authority to address Plaintiff's Third Claim because APD was not a party to the agency proceedings.

Accordingly, the Court grants DHS's Motion to Strike Plaintiff's First and Third Claims and part of Plaintiff's Fourth Claim. This matter, therefore, will proceed only as to Plaintiff's Second Claim and that portion of Plaintiff's Fourth Claim in which Plaintiff seeks records ordered to be produced by the hearings officer in his March 11, 2013, order.

CONCLUSION

For these reasons, the Court **GRANTS** Defendant DHS's Motion (#19) to Strike Claims and, accordingly, **STRIKES** Plaintiff's First and Third Claims and part of Plaintiff's Fourth Claim. This matter, therefore, will proceed only as to Plaintiff's Second Claim and that portion of Plaintiff's Fourth Claim in which Plaintiff seeks records ordered to be produced by the hearings officer in his March 11, 2013, order.

IT IS SO ORDERED.

DATED this 6th day of November, 2013.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge